



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Docket No. FTA-2016-0005

Notice of Buy America Waiver for Special Trackwork Turnout Switch Components.

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Buy America waiver.

SUMMARY: In response to the request of the Detroit Transportation Corporation (DTC) for a Buy America non-availability waiver for the procurement of two special trackwork turnout switch components (switch), the Federal Transit Administration (FTA) hereby waives its Buy America requirements, finding that the materials for which the waiver is requested are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality. This waiver is limited to the procurement by DTC for the switch.

DATES: This waiver is effective immediately.

FOR FURTHER INFORMATION CONTACT: Laura Ames, FTA Attorney-Advisor, at (202) 366-2743 or Laura.Ames@dot.gov.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce that FTA has granted a Buy America non-availability waiver for DTC for the procurement of the switch, under 49 U.S.C. 5323(j)(2)(B) and 49 CFR 661.7(c).

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless "the steel, iron, and manufactured goods used in the project are produced in the United States." 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) all of the

manufacturing processes for the product take place in the United States; and (2) all of the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that “the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,” then FTA may issue a non-availability waiver. 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c). “It will be presumed that the conditions exist to grant this non-availability waiver if no responsive and responsible bid is received offering an item produced in the United States.” 49 CFR 661.7(c)(1).

DTC is the owner and operator of the Detroit People Mover, which is the largest municipal rail system in Michigan. It is a fully automated light rail system that operates twelve rail cars between thirteen passenger stations on an elevated single track in a 2.9 mile loop in Detroit’s central business district. In March 2015, DTC solicited bids to procure special trackwork switch point for Turnout 3, which is located adjacent to the Maintenance Facility Building and provides access to the building. The special trackwork of concern was originally procured from Germany (by Krupp Stahl AG) and is of European standards, using AREMA 115RE rail throughout the turnout with special 60E1A1 (formerly Zu-160) track point section. The project includes replacing stock rails that connect the switch point section to the original running rails, as well as rubber pads; both the rails and pads will be sourced domestically. The waiver only applies to the switch component of the project.

DTC issued the first RFP in March 2015 to thirteen companies. DTC received no responses. It contacted all the companies, and reissued the RFP in May 2015 to six firms that expressed an interest in the project. From this RFP, DTC only received one proposal, from Delta

Railroad Construction, Inc. (Delta). Delta, however, cannot comply with Buy America requirements because the only manufacturer of the switch is a German company. To change the manufacturer, Delta would need to re-engineer the switch and modify the “frog” section and guideway elements; this design would need to be certified. Delta would then need to locate a domestic source to manufacture the re-engineered switch. Upon installation, the proprietary software designer of the automated control train system would need to certify the switch’s performance in order to ensure it could be safely used with the existing guideway switch machines.

On March 22, 2016, and in accordance with 49 U.S.C. 5323(j)(3)(A), FTA published a notice in the **Federal Register** announcing the DTC Buy America waiver request (81 FR 15406), seeking comment from all interested parties, including potential vendors and suppliers. The comment period closed on March 29, 2016, and no comments were received.

Based on the representations of DTC and the lack of any comments, FTA is granting a non-availability waiver for the procurement of the switch described above, on the grounds that the manufactured product is not available in the U.S. This waiver is limited to a single procurement of the switch described above by DTC.

Issued on April 14, 2016.

Dana Nifosi
Deputy Chief Counsel